



KITTITAS COUNTY
WATER CONSERVANCY BOARD
Application for Change/Transfer
Record of Decision

For Ecology Use Only

Received:

RECEIVED
Date Stamp

JAN 25 2011

DEPARTMENT OF ECOLOGY - CENTRAL REGIONAL OFFICE

Reviewed by: _____

Date Reviewed: _____

Applicant: Amerivest Development L.L.C.

Application Number: KITT-10-12

This record of decision was made by a majority of the board at an open public meeting of the Kittitas County Water Conservancy Board held on January 18, 2011.

☒ **Approval:** The (board name) Water Conservancy Board hereby **grants** conditional approval for the water right transfer described and conditioned within the report of examination on January 18, 2011 and submits this record of decision and report of examination to the Department of Ecology for final review.

☐ **Denial:** The (board name) Water Conservancy Board hereby **denies** conditional approval for the water right transfer as described within the report of examination on January 18, 2011 and submits this record of decision to the Department of Ecology for final review.

Signed:

D. Greg Hall
Greg Hall [print name], Chair
Kittitas County Water Conservancy Board

Date: 1-18-11

Approve ☒
Deny ☐
Abstain ☐
Recuse ☐
Other _____

Leah Morrison
Leah Morrison [print name]
[title]
Kittitas County Water Conservancy Board

Date: 1-18-11

Approve ☒
Deny ☐
Abstain ☐
Recuse ☐
Other _____

[print name]
[title]
Kittitas County Water Conservancy Board

Date: _____

Approve ☐
Deny ☐
Abstain ☐
Recuse ☐
Other _____

[print name]
[title]
Kittitas County Water Conservancy Board

Date: _____

Approve ☐
Deny ☐
Abstain ☐
Recuse ☐
Other _____

[print name]
[title]
Kittitas County Water Conservancy Board

Date: _____

Approve ☐
Deny ☐
Abstain ☐
Recuse ☐
Other _____

Mailed to the Department of Ecology Central Regional Office of Ecology, and other interested parties on _____.

If you have special accommodation needs or require this form in alternate format, please contact 360-407-6607 (Voice) or 711 (TTY) or 1-800-833-6388 (TTY).

Ecology is an equal opportunity employer

040-105(03/03)

Record of Decision No. (WR Change App Number)



KITTITAS COUNTY
WATER CONSERVANCY BOARD
Application for Change/Transfer
OF A RIGHT TO THE BENEFICIAL USE OF THE PUBLIC WATERS OF
THE STATE OF WASHINGTON

CS4-01968511a

RECEIVED

JAN 25 2011

DEPARTMENT OF ECOLOGY - CENTRAL REGIONAL OFFICE

Report of Examination

| | | | |
|---|--|--|--|
| <input checked="" type="checkbox"/> Surface Water | <input type="checkbox"/> Ground Water | | |
| DATE APPLICATION RECEIVED 11/19/2010 | WATER RIGHT DOCUMENT NUMBER (i.e., claim, permit, certificate, etc.) Acquavella Court Claim No. 01968 | WATER RIGHT PRIORITY DATE June 30, 1874 | BOARD-ASSIGNED CHANGE APPLICATION NUMBER KITT-10-12 |

| | | | |
|---|----------------------|---------------|---------------------|
| NAME Amerivest Development L.L.C. | | | |
| ADDRESS (STREET) c/o Mitchell F. Williams and Julie A. Williams, P.O. Box 1702 | (CITY) Ellensburg | (STATE) WA | (ZIP CODE) 98926 |

Changes Proposed: ☒ Change purpose ☐ Add purpose ☐ Add irrigated acres ☐ Change point of diversion/withdrawal
☐ Add point of diversion/withdrawal ☒ Change place of use ☒ Other (Temporary, Trust, Interties, etc.) Trust

SEPA
The board has reviewed the provisions of the State Environmental Policy Act of 1971, Chapter 43.21C RCW and the SEPA rules, chapter 197-11 WAC and has determined the application is: ☐ Exempt ☒ Not exempt

BACKGROUND AND DECISION SUMMARY

Existing Right (Tentative Determination)

| | | | | | | | |
|---|--------------------|---|--|-------------------|----------------|------|---------------------|
| MAXIMUM CUB FT/ SECOND 1.36 cfs from April 1 through June 30; .68 cfs from July 1 through October 31; .028 cfs, continuous | MAXIMUM GAL/MINUTE | MAXIMUM ACRE-FT/YR 410.65 acre-feet/year for irrigation 1.43 acre-feet/year for stock-water | TYPE OF USE, PERIOD OF USE Irrigation of 42.39 acres ✓ April 1 through October 31 Stock-water Continuous | | | | |
| SOURCE Manastash Creek | | | TRIBUTARY OF (IF SURFACE WATER) Yakima River | | | | |
| AT A POINT LOCATED: PARCEL NO. | ¼ NW | ¼ NE | SECTION 14 | TOWNSHIP N. 17 | RANGE 17 | WRIA | COUNTY. Kittitas |
| LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED 44.59 acres of property legally described as follows: Lot 19 of that Certain survey as recorded in Book 29 of Surveys at page 174, under Auditor's File Number 200312040048, records of Kittitas County, State of Washington which is bounded by a line described as follows: Beginning at the southwest quarter corner of Section 8, Township 17 North, Range 18 East, W.M., Kittitas County, State of Washington; thence north 01°18'18" east along the west boundary of Section 8, 49.53 feet to the north boundary line of Manastash Road; thence continuing north 01°18'18" east along the west boundary of said Section 8, 787.06 feet to the true point of beginning of said line; thence continuing north 01°18'18" east along the west boundary line of said Section 8 and the west boundary line of said Lot 19, 1393.68 feet; thence south 89°43'06" east, 160.83 feet to the beginning of a curve to the right having a radius of 273.00 feet; thence along said curve to the right an arc length of 169.27 feet, through a central angle of 35°31'35"; thence south 54°11'32" east, 99.41 feet to the beginning of a curve to the left having a radius of 273.00 feet, thence along said curve to the left an arc length of 169.27 feet, through a central angle of 35°31'35"; thence south 89°43'06" east, 137.49 feet; thence south 01°15'49" west, 429.28 feet; thence north 85°38'50" east, 606.25 feet; thence south 88°35'21" east, 721.98 feet; thence south 03°07'36" west, 567.98 feet; thence south 47°20'38" east, 148.25 feet; thence south 82°05'04" west, 1176.09 feet; thence south 90°00'00" west, 957.41 feet to the true point of beginning and terminus of said line. Situated in Section 8, Township 17 North, Range 18 East, W.M., Kittitas County, State of Washington. | | | | | | | |
| PARCEL NO. | ¼ SE | ¼ SE | SECTION 8 | TOWNSHIP N. 17 | RANGE, 18 E | | |

Proposed Use

| | | | | | | | |
|---|--------------------|--|---|-------------------|-------------|------|---------------------|
| MAXIMUM CUB FT/ SECOND | MAXIMUM GAL/MINUTE | MAXIMUM ACRE-FT/YR | TYPE OF USE, PERIOD OF USE | | | | |
| <u>Instream Flow</u> <u>Right A:</u> 1.123 cfs from April 1 through June 30; .56 cfs from July 1 through October 31 | | <u>Instream Flow</u> <u>Right A:</u> 52.9975 acre-feet of consumptive use and 232.95 acre-feet of nonconsumptive use | Instream Flow | | | | |
| <u>Instream Flow</u> <u>Right B:</u> .234 cfs from April 1 through June 30; .118 cfs from July 1 through October 31 | | <u>Instream Flow</u> <u>Right B:</u> 71.7025 acre-feet/year of consumptive use for irrigation | Instream Flow and mitigation of future residential water use as allowed pursuant to a trust water right agreement to be developed between the applicant and Ecology | | | | |
| <u>Stock-water:</u> .028 cfs (continuous) | | <u>Stock-water:</u> 1.43 acre-feet/year | Stock-water | | | | |
| SOURCE Manastash Creek | | | TRIBUTARY OF (IF SURFACE WATER) Yakima River | | | | |
| AT A POINT LOCATED: PARCEL NO. | ¼ NW | ¼ NE | SECTION 14 | TOWNSHIP N. 17 | RANGE 17 | WRIA | COUNTY. Kittitas |
| LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED | | | | | | | |
| <u>Instream Flow:</u> Primary Reach: Within the ordinary high water mark of Manastash Creek commencing at the Keach Jensen ditch diversion, which is located 550 feet south and 650 feet east from the Northwest corner of Section 14 within the NW 1/4 NE 1/4 of Section 14, Township 17 N, Range 17 E.W.M. and ending at the confluence of Manastash Creek and the Yakima River. Secondary Reach: Commencing at the confluence of the Manastash Creek and the Yakima River and terminating at the confluence of the Columbia River and the Yakima River. <u>Stock-water:</u> Within that portion of the NE¼NE¼ of Section 14 lying north and west of the Manastash Road and east of the Kittitas Reclamation District Canal; that portion of the SE¼SE¼ of Section 11 lying S. of Manastash Creek; the S. 300 feet of the SW¼SW¼SW¼ of Section 12; and the N½NW¼NW¼ of Section 13, ALL in T. 17 N, R. 17 E.W.M. | | | | | | | |
| PARCEL NO. | ¼ | ¼ | SECTION | TOWNSHIP N. | RANGE | | |

Board's Decision on the Application

| | | | | | | | |
|--|--------------------|--|---|--|--|--|--|
| MAXIMUM CUB FT/ SECOND | MAXIMUM GAL/MINUTE | MAXIMUM ACRE-FT/YR | TYPE OF USE, PERIOD OF USE | | | | |
| <u>Instream Flow</u> <u>Right A:</u> 1.123 cfs from April 1 through June 30; .56 cfs from July 1 through October 31 | | <u>Instream Flow</u> <u>Right A:</u> 52.9975 acre-feet of consumptive use and 232.95 acre-feet of nonconsumptive use | Instream Flow | | | | |
| <u>Instream Flow</u> <u>Right B:</u> .234 cfs from April 1 through June 30; .118 cfs from July 1 through October 31 | | <u>Instream Flow</u> <u>Right B:</u> 71.7025 acre-feet/year of consumptive use for irrigation | Instream Flow and mitigation of future residential water use as allowed pursuant to a trust water right agreement to be developed between the applicant and Ecology | | | | |
| <u>Stock-water:</u> .028 cfs (continuous) | | <u>Stock-water:</u> 1.43 acre-feet/year | Stock-water | | | | |

1.123
+ .028

1.151 cfs

.118
+ .560

.678 cfs

| | | | | | | | |
|---|---------|---------|---------------|---|-------------|------|---------------------|
| SOURCE Manastash Creek | | | | TRIBUTARY OF (IF SURFACE WATER) Yakima River | | | |
| AT A POINT LOCATED: PARCEL NO. | ¼ NW | ¼ NE | SECTION 14 | TOWNSHIP N. 17 | RANGE 17 | WRIA | COUNTY. Kittitas |
| LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED AS APPROVED BY THE BOARD | | | | | | | |
| <u>Instream Flow:</u> Primary Reach: Within the ordinary high water mark of Manastash Creek commencing at the Keach Jensen ditch diversion, which is located 550 feet south and 650 feet east from the Northwest corner of Section 14 within the NW 1/4 NE 1/4 of Section 14, Township 17 N, Range 17 E.W.M. and ending at the confluence of Manastash Creek and the Yakima River. Secondary Reach: Commencing at the confluence of the Manastash Creek and the Yakima River and terminating at the confluence of the Columbia River and the Yakima River. <u>Stock-water:</u> Within that portion of the NE¼NE¼ of Section 14 lying north and west of the Manastash Road and east of the Kittitas Reclamation District Canal; that portion of the SE¼SE¼ of Section 11 lying S. of Manastash Creek; the S. 300 feet of the SW¼SW¼SW¼ of Section 12; and the N½NW¼NW¼ of Section 13, ALL in T. 17 N, R. 17 E.W.M. | | | | | | | |
| PARCEL NO. | ¼ | ¼ | SECTION | TOWNSHIP N. | RANGE | | |

DESCRIPTION OF PROPOSED WORKS

This application (KITT-10-12) is part of a project that involves the change in place of use and purpose of use of three water rights that were confirmed in *Ecology v. Acquavella* in Subbasin No. 11. The water rights are described on Exhibits A, B and C. This Report of Examination relates to the Water Right described on Exhibit B.

The project seeks to take the water right owned by Mitch and Julie Williams described on Exhibit A and to split it into two instream flow rights. The right legally described on Exhibit D will be designated for instream flow purposes in perpetuity. The right described on Exhibit E will have the purpose of use designated as instream flow for mitigation of future residential water use and will be managed pursuant to a trust agreement with Ecology, which will authorize the portion of the water designated on Exhibit E to be used for mitigation of future residential water use.

The project also involves the water right owned by Amerivest Development L.L.C. described on Exhibit B and which is the subject of this application. The project will seek to split the Amerivest Water Right into two instream flow rights. The right legally described on Exhibit F will be designated for instream flow purposes in perpetuity. The right described on Exhibit G will have the purpose of use designated as instream flow for mitigation of future residential water use and will be managed pursuant to a trust agreement with Ecology, which will authorize the portion of the water designated on Exhibit G to be used for mitigation of future residential water use.

The portion of the water right owned by Allwest L.L.C. described on Exhibit H will be permanently designated for instream flow purposes in perpetuity.

The portions of the Williams and Amerivest water rights described on Exhibits E and G, which will be used for future residential uses as noted above, will be subject to a trust water right agreement that will control the specifics of how, when, where and in what quantities those portions of the water rights can be used for mitigation of future residential water uses. Until the water is used for mitigation of future residential uses it will remain in trust and be used for instream flow purposes as a portion of the Manastash Creek instream flow.

DEVELOPMENT SCHEDULE

| BEGIN PROJECT BY THIS DATE: | COMPLETE PROJECT BY THIS DATE: | COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE: |
|--|--------------------------------|---|
| <u>Instream Flow Right A:</u> (see Construction Schedule on p. 11) | 12/31/2012 | 12/31/2012 |
| <u>Instream Flow Right B:</u> (see Construction Schedule on p. 11) | 12/31/2012 | 12/31/2030 |
| <u>Stock-water:</u> Within 75 days of the Board's decision on the application | 12/31/2012 | 12/31/2015 |

REPORT

BACKGROUND [See WAC 173-153-130(6)(a)]

On November 19, 2010 Amerivest Development L.L.C. of Ellensburg, Washington filed an application for change to change the place of use, purpose of use and to create a trust water right of a water right confirmed in *Department of Ecology v. Acquavella*, Yakima County Superior Court Cause No. 77-2-01484-5 ("*Acquavella*"), Court Claim No. 01968. The application was accepted at an open public meeting on November 19, 2010, and the board assigned application number KITT-10-12.

Attributes of the water right as currently documented

Name on certificate, claim, permit: Amerivest Development L.L.C.

Water right document number: Court Claim No. 01968

As modified by certificate of change number: CS4-01968CTCL (KITT-04-16)

Priority date, first use: June 30, 1874

Water quantities: Qi: 1.36 cfs (April 1 to June 30); 0.68 cfs (July 1 to October 31); 0.028 cfs for stock-water
Qa: 410.65 acre ft./ year (irrigation); 1.43 acre ft./ year (stock-water)

Source: Manastash Creek

Point of diversion/withdrawal: 550 feet south and 650 feet east from the north quarter corner of Section 14, being within the NW ¼ NE ¼ of Section 14, T 17 N, R 17 E., W.M.

Purpose of use: Irrigation of 42.39 acres and stock-water

Period of use: April 1 through October 31

Place of use:

44.59 acres of property legally described as follows:

Lot 19 of that Certain survey as recorded in Book 29 of Surveys at page 174, under Auditor's File Number 200312040048, records of Kittitas County, State of Washington which is bounded by a line described as follows:

Beginning at the southwest quarter corner of Section 8, Township 17 North, Range 18 East, W.M., Kittitas County, State of Washington; thence north 01°18'18" east along the west boundary of Section 8, 49.53 feet to the north boundary line of Manastash Road; thence continuing north 01°18'18" east along the west boundary of said Section 8, 787.06 feet to the true point of beginning of said line; thence continuing north 01°18'18" east along the west boundary line of said Section 8 and the west boundary line of said Lot 19, 1393.68 feet; thence south 89°43'06" east, 160.83 feet to the beginning of a curve to the right having a radius of 273.00 feet; thence along said curve to the right an arc length of 169.27 feet, through a central angle of 35°31'35"; thence south 54°11'32" east, 99.41 feet to the beginning of a curve to the left having a radius of 273.00 feet, thence along said curve to the left an arc length of 169.27 feet, through a central angle of 35°31'35"; thence south 89°43'06" east, 137.49 feet; thence south 01°15'49" west, 429.28 feet; thence north 85°38'50" east, 606.25 feet; thence south 88°35'21" east, 721.98 feet; thence south 03°07'36" west, 567.98 feet; thence south 47°20'38" east, 148.25 feet; thence south 82°05'04" west, 1176.09 feet; thence south 90°00'00" west, 957.41 feet to the true point of beginning and terminus of said line.

Situated in Section 8, Township 17 North, Range 18 East, W.M., Kittitas County, State of Washington.

Existing provisions: This land may have a supplemental right through the Kittitas Reclamation District which is exercised when sufficient creek water is not available.

Manastash Creek Restoration Project:

Manastash Creek is a Yakima River tributary, which drains a 100-square mile watershed in Kittitas County lying west of Ellensburg, Washington. Approximately 30 miles of potential high-quality salmonid habitat remains in the upper portions of the watershed, which lie primarily within the Wenatchee National Forest.

On March 25, 1999, National Marine Fisheries Service ("NMFS") listed the Middle Columbia River Basin steelhead ESU as "threatened," effective May 24, 1999. (64 Fed. Reg. 14,517.) This ESU includes the Yakima River and its tributaries. On February 16, 2000, NMFS designated the Yakima River and its tributaries as critical habitat for Middle Columbia River steelhead. (65 Fed. Reg. 7779.) In May 2000, the applicant's predecessors, along with others, began the process to request financial and technical assistance from the Kittitas County Conservation District ("KCCD") to address fish screening and passage issues. In response to those requests, the KCCD performed surveys (both general informational surveys and professional topographic surveys) on five diversion structures on Manastash Creek.

In February 2001, the Washington Environmental Council (WEC) sent the WDFW, and the largest private water users on Manastash Creek, the Kittitas Reclamation District (KRD) and the Westside Irrigating Company (Westside), a draft notice of intent to sue under Section 11(g) of the Endangered Species Act (ESA), 16 U.S.C. § 1540(g). The draft notice alleged that continued operation of the six irrigation diversions on Manastash Creek would result in an unlawful "take" of threatened steelhead under Section 9 of the ESA, 16 U.S.C. 1538(a). The WEC contended that prior to the advent of irrigated agriculture, Manastash Creek produced steelhead, coho and spring chinook salmon. WEC asserted the main factors limiting anadromous fish production in Manastash Creek were barriers to passage presented by four irrigation diversion dams, six associated unscreened diversions (Manastash, Jensen, Keach, Reed, Anderson and Barnes Road) which entrain juvenile fish, and the diversion of the entire stream flow during the summer/early fall irrigation season between stream miles 1.5 and 4.9. In 1990, Manastash Creek was rated by the Bureau of Reclamation as "Category II," meaning that "flows, access and habitat would be adequate with improvements that are technically feasible within 10 years." Yakima/Klickitat Production Project at 4-3.

The draft notice was accompanied by a cover letter inviting the water users to work with WEC in a collaborative process which would protect both threatened fish and the future of irrigated agriculture in Kittitas County. The parties met initially on March 1, 2001, and agreed to move forward with a collaborative process to address the issues raised in WEC's draft notice. These collaborative efforts proceeded and a relationship of cooperation and trust between the parties has developed. That relationship is the result of the WEC and the irrigators, even though they had different positions, agreeing to recognize and respect each others goals. The WEC's goal is to eliminate fish passage barriers, eliminate unscreened diversions and improve instream flows. The irrigators' goal is to cooperate in the improvement of fish habitat on Manastash Creek while at the same time remaining whole and being able to manage and operate their land and water rights as a viable agricultural enterprise.

A conceptual watershed restoration plan is the fruit of these many months of collaborative efforts ("Implementation Plan") (see Exhibit N to the Williams Report of Examination (KIT-10-11), filed herewith). That plan includes two phases. In Phase I, the major water diversions on Manastash Creek will be consolidated and reconstructed so as to eliminate manmade barriers or impediments to fish passage and all unscreened diversions. The goal of Phase II is the restoration of natural summer/fall flows in the lower part of Manastash Creek while at the same time protecting the vested water rights of the Manastash Creek water users. The Williams, Amerivest, and Allwest water right transfers will provide significant water for instream flows and thus assist in fulfilling Phase II of the Manastash Creek Restoration Project.

Tentative determination of the water right

The tentative determination is provided on the front page of this report.

History of water use

The water right is subject to *Department of Ecology v. Acquavella*, Yakima County Superior Court Cause No. 77-2-01484-5 ("Acquavella"). The water is diverted from Manastash Creek, which is in Subbasin 11 of the *Acquavella* water rights adjudication. Subbasin 11 had a Conditional Final Order ("CFO") entered on June 14, 2001. The water rights that are the subject of this Report of Examination were confirmed under the names of Charles S. and Margaret L. Steward (hereinafter "Steward") under Court Claim No. 01968.

After the water right was confirmed in *Acquavella*, the then owners of the water right, Steward, sought to change a portion of the water right. On March 30, 2005, after entry of the CFO, a change in the place of use of a portion of the water right was approved by the Washington State Department of Ecology ("Ecology"). The change decision by Ecology was assigned water right change application number CS4-01968CTCL (KIT-04-16) (hereinafter the "2005 Change Decision"), a copy of which is attached hereto as Exhibit I. The Department of Ecology modified the 2005 Change Decision and a copy of their modification letter dated May 12, 2005 is attached hereto as Exhibit J. A Proof of Appropriation, dated August 17, 2009, documenting completion of that transfer and full beneficial use of the water at the new point of diversion by Allwest pursuant to the 2005 Change Decision was filed with the Department of Ecology. A copy of that Proof of Appropriation is attached hereto as Exhibit K. A color map is attached, which shows the place of use of the water right after the 2005 Change Decision (Exhibit O).

The current applicant and other owners of property to which Court Claim No. 01968 is appurtenant applied to the Yakima County Superior Court in the *Acquavella* water rights adjudication to divide the water right amongst four different parties, Allwest L.L.C., the current applicant, Amerivest Development L.L.C., Steward, and Bart G. Bland (hereinafter "Bland"). On October 14, 2010, the *Acquavella* court entered an Order to Divide Water Right and Join Parties. A copy of that order is attached hereto as Exhibit L.

Previous changes

There was a previous change associated with this water right, as described above.

SEPA

The board has reviewed the proposed project in its entirety and concluded that this transfer and KIT-10-11 and KIT-10-13 when taken together are not SEPA exempt. The applicant submitted a State Environmental Policy Act Checklist (hereinafter, the "SEPA Checklist"), which covered this application and Applications Nos. KIT-10-11 and KIT-10-13, which were filed simultaneously by this applicant, a related entity and members of this applicant and the SEPA Checklist submitted by the Applicant identified the environmental impacts of all three of these water right transfers. After reviewing the SEPA Checklist the Board concluded that a Determination of Nonsignificance ("DNS") was appropriate. A copy of the SEPA Checklist the Board received is attached hereto as Exhibit M and the DNS issued by the Board on December 22, 2010 is attached hereto as Exhibit N. No comments or appeals of the DNS have been received by the Board.

Other

Water right holders at three existing points of diversion (Anderson, Reed, and Hatfield) on Manastash Creek have applied to change their point of diversion upstream to the existing MWDA point of diversion and consolidate the four diversions at one point. A map identifying the three existing diversion points and the location of the consolidated diversion is attached hereto as Exhibit Q. This change application is one element in the Manastash Creek Restoration Project, described above. In the Implementation Plan the parties agreed that the consolidation of diversions should not occur until 6 cfs of water has been acquired for instream flow. The three applications involved in this project will result in 3.418 cfs being permanently placed instream. Added to the total of 4.77 cfs already permanently instream as a result of water acquisitions and conservation projects will result in 8.188 cfs, which satisfies the initial Manastash Implementation Plan Phase II goals of 6 cfs.

The information or conclusions in this section were authored and/or developed by Jeff Slothower, WSBA # 14526, Attorney for Applicant.

COMMENT AND PROTESTS [See WAC 173-153-130(6)(b)]

Public notice of the application was given in the Ellensburg Daily Record on December 3, 2010 and December 10, 2010. Protest period ended on January 18, 2011.

There was one comment received during the 30 day protest period. In addition, no oral and written comments were received at an open public meeting of the board or other means as designated by the board.

Date: Prior to January 18, 2011

This was recognized by the board as a ☐ Protest ☒ Comment

Name/address of protestor/commenter: Bart Bland

Issue: Mr. Bland was concerned with the effect this transfer and the Allwest transfer (KIT-10-13) would have on the conveyance loss in the ditch used by Mr. Bland, the applicant and others from April 1 to May 1, which is essentially the period prior to the KRD commencing operations.

Board's analysis: The board lacks legal authority to address issues within a private ditch as a result of the *Big Creek Water Users v. Suncadia*, Pollution Control Hearings Board ("PCHB") decision (PCHB 02-113). As set forth in the *Big Creek* decision, the point at which impairment may be determined for purposes of RCW 90.03.380 is at the point where the water is diverted from the natural water course and not within the delivery ditch down ditch from the point the water is diverted from the natural water course. However, the Board has been advised by the applicant that the applicant intends to use a portion of the nonconsumptive water associated with the Allwest water right transfer (KITT-10-13) to enter it into a trust water right to allow for a portion of the nonconsumptive water to be in trust and managed through a trust water right so it can be released and used to compensate for any conveyance issues within the ditch during the period of time between April 1 and May 1 of each irrigation season.

The information or conclusions in this section were authored and/or developed by Jeff Slothower, WSBA # 14526, Attorney for Applicant.

INVESTIGATION [See WAC 173-153-130(6)(c)]

The following information was obtained from a site inspection conducted by Len Morrison on November 22, 2010, technical reports, research of department records, the exhibits attached hereto, air photos and conversations with the applicant and/or other interested parties.

Proposed project plans and specifications

The results of the proposed transfer would be to split the Amerivest Water Right into two instream flow rights. The right legally described on Exhibit F (Instream Flow Right A) will be designated for instream flow purposes in perpetuity. The right described on Exhibit G (Instream Flow Right B) will have the purpose of use designated as instream flow for mitigation of future residential water use and will be managed pursuant to a trust agreement with Ecology, which will authorize the portion of the water designated on Exhibit G to be used for mitigation of future residential water use. Both instream flow uses will have a primary reach described as follows:

- ✓ Primary Reach: Within the ordinary high water mark of Manastash Creek commencing at the Keach Jensen ditch diversion, which is located 550 feet south and 650 feet east from the Northwest corner of Section 14 within the NW 1/4 NE 1/4 of Section 14, Township 17 N, Range 17 E.W.M. and ending at the confluence of Manastash Creek and the Yakima River.

and a secondary reach described as follows:

- ✓ Secondary Reach: Commencing at the confluence of the Manastash Creek and the Yakima River and terminating at the confluence of the Columbia River and the Yakima River.

Once the change of use and purpose of use of the irrigation component of the water right is approved, then the water right identified as Instream Flow Right A will be sold by the current owner to Trout Unlimited, who through various arrangements with Ecology will transfer title of the water right to Ecology to manage the water for instream flow purposes in perpetuity.

The Instream Flow Right identified as Instream Flow Right B will be placed instream and used as mitigation for future residential water use. Instream Flow Right B will ultimately be used and allocated pursuant to a Trust Water Right Agreement between the water right owners and the Washington State Department of Ecology ("Ecology"). The terms and conditions of the Trust Water Right Agreement are beyond the statutory jurisdiction of the Board. The terms and conditions of the Trust Water Right Agreement will be established pursuant to a separate process between the owner of the water right and Ecology.

The stock-water right will continue to be diverted at the historic point of diversion but will be used in a new place of use to water stock.

Other water rights appurtenant to the property (if applicable)

The property is also within the KRD service area. KRD water has historically been delivered to fulfill crop requirements when water was unavailable from Manastash Creek. If this change is approved, the KRD water will be used to irrigate a portion of the property within the approved place of use. However, as discussed elsewhere, 29.53 acres of the place of use will be fallowed and not be irrigated with either KRD water or Manastash Creek water. This fallowing of 29.53 acres is necessary to avoid an increase in consumptive use and a negative effect on TWSA when Instream Flow Right B is used for future residential use and when the Williams (KITT-10-11) Instream Flow Right B is used for future residential use. The acreage necessary to be fallowed as a result of Instream Flow Right B approved in this Report of Examination is 24.655 (29.53 - 4.875 acres required to be fallowed in KITT-10-11 = 24.655).

Public Interest (groundwater only)

The proposed transfer is not subject to RCW 90.44.100. However, this application, if approved as an instream flow right, will increase flows from the historic point of diversion downstream. The Water Resources Act of 1971 (Chapter 90.54 RCW) was enacted to provide strategic means of "providing and securing sufficient water to meet the needs of people, farms and fish". Protecting stream flows in the amounts identified in this report is anticipated to improve fish habitat in Manastash Creek. The proposed changes to the water right are in the public interest.

Tentative Determination

In order to make a water right change decision, the Board must make a tentative determination on the validity and extent of the right. The Board has made the tentative determination as displayed upon the first page of this report. There are several circumstances that can cause the board's tentative determination to differ from the stated extent of the water right within water right documentation. Water right documents attempt to define a maximum limitation to a water right, rather than the actual extent to which a water right has been developed and maintained through historic beneficial use. Additionally, except for a sufficient cause pursuant to RCW 90.14.140, water rights, in whole or in part, not put to a beneficial use for five consecutive years since 1967 may be subject to relinquishment under Chapter 90.14.130 through 90.14.180 RCW. Water rights may additionally be lost through abandonment. The Board's tentative determination was based upon the following findings: The Board reviewed: (1) air photographs attached to the Declaration of Mitchell F. Williams in Support of the Amerivest Transfer (see Exhibit P hereto); (2) information provided by the Manastash Implementation Plan; (3) the SEPA Checklist (see Exhibit M hereto); (4) information from the applicant (see Exhibit P hereto); (5) the 2005 Change Decision (see Exhibit I hereto) and corresponding Proof of Appropriation (see Exhibit K hereto); and (6) the site visit. Based upon the evidence presented the Board believes that the water right has been used since the 2001 CFO was entered in the amounts set forth in the Board's Tentative Determination on page 1.

Geologic, Hydrogeologic, or other scientific investigations (if applicable)

Ecology retained Golder Associates (Golder) (Golder 2006) to conduct an assessment of ground water in the Manastash Creek alluvial fan to characterize the geology and hydrogeology of the Manastash Creek alluvial fan, and evaluate the potential for developing an associated source of ground water supply to diversions of surface water from Manastash Creek. Golder submitted their finding in two memorandums dated May 3, 2004 (Phase 1) and October 17, 2006 (Phase 2.) Phase 1 contains information on aquifer properties, recharge processes, ground water flow, and ground water discharge. Phase 2 was focused toward developing a better understanding of the shallow alluvial system through data review, geophysical surveys, installation and testing of wells and ground water flow modeling.

As a part of the study, Golder noted the following with regard to ground water flow across the Manastash Creek alluvial fan:

- The general direction of ground water flow is from the high ground surrounding the Kittitas Valley toward the center of the valley and the Yakima River.
- At the head of the fan in areas close to Manastash Creek, ground water appears to flow from the creek in the direction of the adjacent areas.
- At the toe of the fan, ground water is channeled back into the creek and into a pair of subsidiary (discharge) features that are located at the southern and northern margins of the fan.

These findings are consistent with conceptual models of alluvial fans. Generally speaking, streams are expected to lose surface water to the ground in the head and mid-fan region and gain flow from ground water near the toe or distal margins of the fan (Fetter 2001). Ground water will move down gradient from the head to the toe in a radial pattern, roughly mimicking the fan deposition pattern. Depending on the locations where deep percolation of irrigation recharge occurs, some return flow may begin to reenter Manastash Creek, but it is unlikely that all return flows will re-enter the creek before they reach and discharge to the Yakima River.

A copy of the Golder report is available by contacting Ecology (509-575-2490).

Water Use and Estimated Consumptive Amounts

Using the equations for total and consumptive use (CU) in Ecology's Guidance 1210, consumptive use per acre should be calculated as the total irrigation requirement (TIR) times the percent evaporation (%EVAP) plus the crop irrigation requirement (CIR). Multiplying by the irrigated acreage gives us the total consumptive use, as follows:

$$CU = (TIR \times \%EVAP + CIR) \times \text{Acreage}$$

For the 2006 and 2007 irrigation seasons, total water use was 410.2 acre-feet for irrigation of 42.39 acres, resulting in a TIR of about 9.67 acre-feet per year per acre (afy/acre). In 2008 only part of the place of use was irrigated because development had begun.

A CIR for pasture grass/turf of 31.46 inches (2.76 afy/acre) was calculated using the Washington Irrigation Guide for pasture grass/turf crop located in the vicinity of Ellensburg, Washington (WIG Appendix B-49a).

The property is irrigated predominately using flood irrigation with some sprinklers, for which Guidance 1210 recommends a %EVAP of 5 percent.

Applying these values, consumptive use associated with irrigation use under this right is estimate as:

$$CU = (9.67 \text{ afy/acre} \times 0.05 + 2.76 \text{ afy/acre}) \times 42.39 \text{ acres} = 137.49 \text{ acre-feet per year}$$

This equates to a consumptive use per acre of about 3.2 afy/acre. 3.12

However, there have been several other transfers of water as part of the Manastash Project. In those transfers Ecology determined water use and estimated consumptive use amounts. Those prior decisions resulted in a consumptive use calculation being arrived at consistent with Ecology Publication POL-1020. In determining historical irrigation use, the Board relied on information provided in the Referee's supplemental report in *Acquavella* and aerial photography provided by the applicant and the applicant's testimony. Based upon that information, the Board concluded that the quantity of water

identified under Court Claim No. 01968 was beneficially used on approximately 42.39 acres using a flood irrigation system during the past five (5) years. The Board concludes that the consumptive use is 2.9 acre-feet per acre or 122.931 acre-feet per year. The consumptive use calculations are consistent with Ecology Guidance Document 1210.

The stock-water change does not require a consumptive use analysis.

Other

The applicant seeks to use 71.4995 acre-feet per year for ERU mitigation under Instream Flow Right B, leaving 51.4315 of consumptive acre-feet for Instream Flow Right A. In order to arrive at an instantaneous quantity for Instream Flow Right B the Board adopts the applicant's instantaneous calculations set forth in the application filed by the applicant. Those calculations are as follows:

Qi for the Trust water for instream flow and Qi for the consumptive use mitigation water were calculated as follows:

Qi calculations for CU mitigation water and transferred water:

$$\text{April 1 - June 30} = 91 \text{ days} \times 1.98 \text{ (af/cfs/day)} = 180.18 \text{ af/cfs}$$

$$\text{July 1 - Oct 31} = 123 \text{ days} \times 1.98 \text{ (af/cfs/day)} = 243.54 \text{ af/cfs}$$

$$(180.18 \text{ af/cfs} \times X \text{ cfs}) + (243.54 \text{ af/cfs} \times X/2 \text{ cfs}) = \text{af}$$

$$(180.18 \times X) + (121.77 \times X) = \text{afy}$$

$$301.95 \text{ af/cfs} \times X = \text{afy}$$

Class 3 - Amerivest B water, transferred for ERU mitigation:

$$301.95 \times X = 71.5 \text{ af}$$

$$X = 0.237 \text{ cfs} \quad X/2 = 0.119 \text{ cfs}$$

Class 3 - Amerivest A water transferred for permanent instream flow:

$$\text{Total} = 1.36 - 0.237 = 1.123 \text{ cfs}$$

$$\text{Total} = .680 - 0.119 = 0.561 \text{ cfs.}$$

Instream Flow Rights' Primary and Secondary Reaches

Instream Flow Right A.

Primary Reach:

The primary reach, that portion of the stream that benefits from the reduced diversion, begins at the historical point of diversion and continues downstream to the point of the stream where any return flows resulting from the water use, have returned to the stream. A primary reach is comprised of both consumptive and non-consumptive water. The primary reach extends from the historical diversion point to an area where most return flows would have returned to the surface water source. In this case that reach is defined above as the Keach/Jensen diversion downstream to the confluence of the Manastash Creek and the Yakima River. Under this change application, 1.123 cfs from April 1 to June 30 and 0.561 cfs from July 1 to October 31 as historically used is proposed to remain in Manastash Creek. This water is comprised of both the non-consumptive (288.43217 acre-feet) and the consumptive use (51.4315 acre-feet) portions of the water attributable to 1.123 cfs being diverted from April 1 to June 30 and 0.561 being diverted from July 1 to October 31. This water in the Manastash Creek would be able to be protected in the primary reach only. The primary reach is described above.

Secondary Reach:

Downstream of the primary reach, flow in the secondary reach is increased only by the consumptive amount of water normally lost by irrigating the crop. A secondary reach is comprised only of the consumptive portion of the water right. The secondary reach begins where the primary reach ends, and extends, typically, to the confluence of the Yakima River and the Columbia River. The consumptive use portion of the water right, 51.43 acre-feet per year, will remain instream and be protected throughout the secondary reach.

Instream Flow Right B.

Primary Reach:

The primary reach, that portion of the stream that benefits from the reduced diversion, begins at the historical point of diversion and continues downstream to the point of the stream where any return flows resulting from the water use, have returned to the stream. A primary reach is comprised of both consumptive and non-consumptive water. The primary reach extends from the historical diversion point to an area where most return flows would have returned to the surface water source. In this case that reach is defined above as the Keach/Jensen diversion downstream to the confluence of the Manastash

Creek and the Yakima River. Under this change application, 0.237 cfs from April 1 to June 30 and 0.119 cfs from July 1 to October 31 as historically used is proposed to remain in Manastash Creek until used for residential mitigation. This water is comprised of 71.5 acre-feet of consumptive use of water. This water in the Manastash Creek would be able to be protected in the primary reach only. The primary reach is described above.

Secondary Reach:

Downstream of the primary reach, flow in the secondary reach is increased only by the consumptive amount of water normally lost by irrigating the crop. A secondary reach is comprised only of the consumptive portion of the water right. The secondary reach begins where the primary reach ends, and extends, typically, to the confluence of the Yakima River and the Columbia River. A portion of the 71.5 acre-feet per year will remain instream and be protected throughout the secondary reach until fully used for mitigation of residential use.

The information or conclusions in this section were authored and/or developed by Jeff Slothower, WSBA # 14526, Attorney for Applicant.

CONCLUSIONS [See WAC 173-153-130(6)(d)]

Tentative determination (validity and extent of the right)

A portion of Court Claim No. 01968 is appurtenant to the subject property. Review of the evidence provided within this report and proceedings within the Yakima River Basin Adjudication Court indicate that a total of 42.39 acres have been historically and beneficially used under Court Claim No. 01968 and stock-water.

In accordance with Chapter 90.38 RCW, the Board makes a tentative determination that the portion of Court Claim No. 01968 Amerivest owns represents a valid water right authorized to divert up to 1.36 cfs from April 1 through June 30, 0.68 cfs from July 1 through October 31, up to 410.65 acre-ft/yr of water for irrigation from Manastash Creek and .028 cfs, 1.43 acre-feet/yr for stock-water.

Approval of this change of purpose of use to instream flow will not impair existing water rights so long as the requirement to fallow as discussed above is imposed. Thus, the Board has imposed a condition to fallow 24.655 acres as set forth below.

Creating an instream flow right allowed under Chapter 90.38 RCW is not contrary to the public interest.

Relinquishment or abandonment concerns

The Board has determined that no part of the water right has been relinquished or abandoned.

Hydraulic analysis

As discussed above, the Board reviewed hydrogeologic data.

Consideration of comments and protests

The Board acknowledges the comment received and this applicant's proposed accommodation to satisfy the concern.

Impairment

Impairment Considerations

Instream Flow Right A:

Under RCW 90.38.040(5)(a), an Instream Flow Right may be exercised only if it does not impair existing rights. 1.123 cfs from April 1 to June 30 and 0.561 cfs from July 1 to October 31 of water (at peak flow) is proposed to become an Instream Flow Right specifically for instream flow purposes within Manastash Creek. By no longer diverting a maximum of 1.123 cfs from April 1 to June 30 and 0.561 cfs from July 1 to October 31 from Manastash Creek, that portion of the right will remain instream, subject to hydrogeologic conditions. The intent is to increase flow downstream of the historic point of diversion, as outlined in the Manastash Implementation Plan. Using the water right for instream flow purposes in the Primary and Secondary Reach will increase flows from the historic point of diversion downstream. As such, there will be no impairment of any water rights as a result of instream flow uses.

Instream Flow Right B:

Under RCW 90.38.040(5)(a), an Instream Flow Right may be exercised only if it does not impair existing rights. 0.237 cfs from April 1 to June 30 and 0.119 cfs from July 1 to October 31 of water (at peak flow) is proposed to become an Instream Flow Right specifically for instream flow purposes within Manastash Creek. By no longer diverting a maximum of 0.237 cfs from April 1 to June 30 and 0.119 cfs from July 1 to October 31 from Manastash Creek, that portion of the right will remain instream, subject to hydrogeologic conditions. The intent is to increase flow downstream of the historic point of diversion, as outlined in the Manastash Implementation Plan. Using the water right for instream flow purposes in the Primary and Secondary Reach will increase flows from the historic point of diversion downstream. As such, there will be no impairment of any water rights as a result of instream flow uses.

Stock-water:

The use of the stock-water at a new place of use will not impair any other water right holder.

Enhancement and the KRD Right

Lands will be required to be fallowed as a result of the transfer, creating Instream Flow Right B as discussed above. No lands will be required to be fallowed as a result of Instream Flow Right A. Among the factors that the Board considered in arriving at this conclusion is that the project is part of a larger conservation project designed to increase in stream flows through a combination of water acquisitions, on-farm efficiency improvements, reduced irrigation frequency, reduced irrigation times and variations in crop rotation, all as set forth in the Manastash Implementation Plan. The place of use is also served by the KRD. The Yakima Adjudication Court (the Court) confirmed the KRD's right (Court Claim No. 0465) to cover 59,122.29 irrigable acres within the KRD's boundaries. The Court recognized the interaction of a portion of the Manastash creek users with the KRD in the *Report of the Court Concerning the Water Rights for the Kittitas Reclamation District*. The Court authorized the KRD to appropriate its irrigation water shares within its boundaries and within the limits of their confirmed right. This change, if approved, would not enhance the KRD right.

TWSA

TWSA stands for the Total Water Supply Available and is comprised of the entire Yakima River basin outflow. Some TWSA water comes from artificial storage, used to fulfill Bureau of Reclamations contracted rights. Each Bureau of Reclamation user has an assigned amount each year, which is their proportion of the TWSA. A measuring point of TWSA is at Parker, Washington, located downstream of Union Gap, Washington.

Instream Flow Right A:

If this change application is approved, the KRD water that the applicant intends to use would not increase the amount of water authorized to KRD under the Yakima River Basin Adjudication (Court Claim No. 0465). As a result of this change, Manastash Creek would realize an increase in flow, as would the secondary reach. The TWSA at the Parker Dam will not be decreased by this change. Thus, there is no negative impact on TWSA. TWSA will be enhanced because the consumptive and nonconsumptive use associated with Instream Flow Right A will remain instream and not be used for irrigation in perpetuity.

Instream Flow Right B:

So long as the 24.655 (2.9 acre-ft/yr x 24.655 acres to fallow = 71.5 acre-ft/yr of consumptive use) acres are fallowed as discussed above, the use of Instream Flow Right B for future residential uses will not have a negative impact on TWSA. Until Instream Flow Right B is fully used for residential purposes Instream Flow Right B will not be diverted and the 71.5 acre-feet of consumptive use associated with the right will remain instream. The 4.875 acres to be fallowed are part of the 29.53 acres available to be fallowed in conjunction with the Amerivest application (KIT-10-12). Thus, for the Amerivest application there will be 24.655 acres available to fallow (29.53 - 4.875 = 24.655). Thus, until full use of Instream Flow Right B for residential uses occurs, TWSA will be enhanced because the consumptive use associated with Instream Flow Right B will remain instream and not be used for irrigation.

Stock-water:

The use of the stock-water at a new place of use will not have any effect on TWSA or the KRD right.

Public Interest

See the Board's discussion of the public interest above.

Other

The board also considered the previous provisions associated with the water right as identified in the background section of this report when making its decision.

Return Flows and Impairment

Return flows, including foreign return flows, have primarily augmented the flow in Manastash Creek only downstream of most diversions on Manastash Creek. Some return flows may be intercepted by other irrigation canals before they can return to Manastash Creek. The Yakima Adjudication Court determined that only those return flows that originate from Manastash Creek (and could demonstrate legal, historic use) could be confirmed a return flow right in Subbasin 11 (Manastash Creek). No evidence is present that would suggest this transfer will negatively impact or impair rights, if any, to return flows.

Based on the foregoing, the Board recommends approval of the transfer as follows:

| | | | | | | | |
|---|---------|--------------------|---------------|--|-------------|---|---------------------|
| MAXIMUM CUB FT/ SECOND | | MAXIMUM GAL/MINUTE | | MAXIMUM ACRE-FT/YR | | TYPE OF USE, PERIOD OF USE | |
| <u>Instream Flow</u> <u>Right A:</u> 1.123 cfs from April 1 through June 30; .56 cfs from July 1 through October 31 | | | | <u>Instream Flow</u> <u>Right A:</u> 52.9975 acre-feet of consumptive use and 232.95 acre-feet of nonconsumptive use | | Instream Flow | |
| <u>Instream Flow</u> <u>Right B:</u> .234 cfs from April 1 through June 30; .118 cfs from July 1 through October 31 | | | | <u>Instream Flow</u> <u>Right B:</u> 71.7025 acre-feet/year of consumptive use for irrigation | | Instream Flow and mitigation of future residential water use as allowed pursuant to a trust water right agreement to be developed between the applicant and Ecology | |
| <u>Stock-water:</u> .028 cfs (continuous) | | | | <u>Stock-water:</u> 1.43 acre-feet/year | | Stock-water | |
| SOURCE Manastash Creek | | | | TRIBUTARY OF (IF SURFACE WATER) Yakima River | | | |
| AT A POINT LOCATED: PARCEL NO. | ¼ NW | ¼ NE | SECTION 14 | TOWNSHIP N. 17 | RANGE 17 | WRIA | COUNTY. Kittitas |
| LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED AS APPROVED BY THE BOARD | | | | | | | |
| <u>Instream Flow:</u> Primary Reach: Within the ordinary high water mark of Manastash Creek commencing at the Keach Jensen ditch diversion, which is located 550 feet south and 650 feet east from the Northwest corner of Section 14 within the NW 1/4 NE 1/4 of Section 14, Township 17 N, Range 17 E.W.M. and ending at the confluence of Manastash Creek and the Yakima River. Secondary Reach: Commencing at the confluence of the Manastash Creek and the Yakima River and terminating at the confluence of the Columbia River and the Yakima River. <u>Stock-water:</u> Within that portion of the NE¼NE¼ of Section 14 lying north and west of the Manastash Road and east of the Kittitas Reclamation District Canal; that portion of the SE¼SE¼ of Section 11 lying S. of Manastash Creek; the S. 300 feet of the SW¼SW¼SW¼ of Section 12; and the N½NW¼NW¼ of Section 13, ALL in T. 17 N, R. 17 E.W.M. | | | | | | | |
| PARCEL NO. | ¼ | ¼ | SECTION | TOWNSHIP N. | RANGE, | | |

The information or conclusions in this section were authored and/or developed by Jeff Slothower, WSBA # 14526, Attorney for Applicant.

PROVISIONS [See WAC 173-153-130(6)(f)]

Conditions and limitations

Instream Flow Right A:

1. With the purpose of use of the water being changed from irrigation to instream flow no portion of the water that is designated for instream flow may be diverted from the historic point of diversion.
2. This authorization shall not excuse the applicant from compliance with any applicable federal, state or local statutes, ordinances, or regulations, including those administered by other programs of the
3. Department of Ecology. Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions and to inspect at reasonable times any measuring device used to meet the above conditions.

Instream Flow Right B:

1. With the purpose of use of the water being changed from irrigation to instream flow no portion of the water that is designated for instream flow may be diverted from the historic point of diversion.
2. This authorization shall not excuse the applicant from compliance with any applicable federal, state or local statutes, ordinances, or regulations, including those administered by other programs of the
3. Department of Ecology. Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions and to inspect at reasonable times any measuring device used to meet the above conditions.
4. In order to avoid an increase in consumptive use and a decrease in TWSA 24.655 acres must be fallowed and not irrigated with water from any source. The 24.655 acres to be fallowed as a result of the creation of Instream Flow Right B will be within the area identified on Exhibit P hereto, which is legally described as Lots 9, 2, 3 and 8 of the Midfield Plat LLC, recorded in Book 11 of Plats, pages 161 and 162, under Kittitas County Auditor's File No. 200808190027, records of Kittitas County, Washington.

more Lots
than those
4 chub
Parad. 200808190027

Water Right B (set forth in the Board's Tentative Determination on page 1), which is used for stock-water, shall follow the provisions listed in the Report of Referee dated May 9, 1994, Supplemental Report of Referee dated April 17, 1998, Second Supplemental Report of Referee dated April 23, 2001 and the Conditional Final Order for Subbasin 11 (Manastash Creek) within *Acquavella* as modified by the 2005 Change Decision, unless superseded by a Final Decree or such other superseding document at the new place of use.

The remaining portion of the water right not transferred shall comply with Order No. 77-2-01-01484-5 Requiring Metering, measuring, and Reporting Requirements, all Subbasins (1-31) in Benton, Kittitas, and Yakima Counties entered September 15, 2005 in *Acquavella*. The order may be viewed at the following website:

<http://www.ecy.wa.gov/programs/wr/measuring/images/pdf/order772014845.pdf>.

Mitigation (if applicable)

- As a condition of the Manastash Creek Restoration Project Instream Flow Enhancement Implementation Plan the applicant that proposes this change intends to comply with the Implementation Plan.
- The applicant has proposed voluntary mitigation to accommodate the comment from Mr. Bland relating to this transfer and the transfer proposed by Allwest in KITT-10-13. The mitigation is to allow for the diversion of a portion of the nonconsumptive water between April 1 and May 1 of each year. The amount of nonconsumptive water to be diverted will be determined by the applicant, working with Ecology and Mr. Bland to establish a trust water right that will establish the quantities to be diverted and the conditions under which the nonconsumptive water may be changed.

Construction Schedule

There will be no construction necessary or associated with the transfer to instream flow purposes and therefore no construction schedule is necessary. The applicant intends to cease diversion upon approval by Ecology and sell the water right to Ecology for instream flow purposes.

Other

None.

The information or conclusions in this section were authored and/or developed by Jeff Slothower, WSBA # 14526, Attorney for Applicant.

The undersigned board commissioner certifies that he/she understands the board is responsible "to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination." [WAC 173-153-130(5)] The undersigned therefore, certifies that he/she, having reviewed the report of examination, knows and understands the content of this report and concurs with the report's conclusions.

Signed at Ellensburg, Washington

This 18th day of January, 2011

Dr. Jeff Slothower Chairman
_____, Board Representative
Kittitas County Water Conservancy Board

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